

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

LUCY HORTON,)	
)	
Plaintiff,)	
)	
vs.)	
)	CIVIL CASE NO. 3:14-CV-00505
ENHANCED RECOVERY)	
COMPANY, LLC.,)	
)	
Defendant.)	
_____)	

**DEFENDANT’S MOTION TO DISPENSE WITH MEDIATION REQUIREMENT
OR ALTERNATIVE MOTION TO EXTEND MEDIATION DEADLINE**

Defendant, Enhanced Recovery Company, LLC, (“ERC”) by and through its undersigned counsel, moves this Court, pursuant to Rule 16, Federal Rules of Civil Procedure, and Local Rule 7.1, for an order dispensing with mediation or, in the alternative, to extend this Court’s deadline for completing mediation and in support thereof, state as follows:

1. Plaintiff Lucy Horton (“Plaintiff”) filed her Complaint under the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.*, and the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.*, on September 12, 2014.
2. The Court entered its Pretrial Order and Case Management Plan (Dkt. 17) (the “Scheduling Order”) on December 16, 2014. The Scheduling Order set a deadline of July 1, 2015 for completion of mediation.
3. The parties to this action have exchanged written discovery requests and served subpoenas on third parties in order to limit the possible issues of fact for trial and mediation.
4. Based on the Plaintiff’s discovery responses, Defendant intends to file a Motion for Summary Judgment which it believes will be dispositive of all of Plaintiff’s claims.

Defendant anticipates that its Motion for Summary Judgment will be filed with the Court on or before July 10, 2015.

5. Pursuant to Plaintiff's sworn answers to Interrogatories, Plaintiff claims actual damages in the total amount of \$3,374.10. In light of the minimal amount of actual damages sought in this case, and Defendant's belief in the strength of its forthcoming Motion for Summary Judgment, Defendant believes that a mediation before the Court rules on the Motion for Summary Judgment would be a waste of the parties' time and resources. Accordingly, Defendant requests the Court to dispense with the mediation requirement at this time.

6. Alternatively, Defendant requests the Court to extend the deadline for mediation of this case for a period of 30 days, through July 31, 2015.

7. Defendant has proposed a mediator, Wayne Huckel, to Plaintiff and has proposed five alternative dates on which Mr. Huckel and Defendant are available for mediation prior to July 31, 2015. As of the filing of this motion, the assistant for the undersigned counsel has talked to Plaintiff, however, Plaintiff stated that she could not provide her availability for mediation until she consulted with a third party.

8. Accordingly, if the Court is not willing to dispense with the mediation requirement, Defendant requests an extension of the mediation deadline contained in the Scheduling Order up to and through July 31, 2015, to complete mediation.

9. The requested extension is not for the purpose of delay, but is an effort to conduct this litigation in the most efficient manner for the parties and the Court.

WHEREFORE, ERC requests the Court to enter an order modifying the Scheduling Order to extend the mediation deadline to July 31, 2015.

Dated: July 1, 2015

Respectfully submitted,

/s/ Harold C. Spears

Harold C. Spears
N.C. State Bar No. 8989
CAUDLE & SPEARS, P.A.
121 West Trade Street, Suite 2600
Charlotte, NC 28202
Tel: (704) 377-1200
Fax: (704) 338-5858
Email: hspears@caudlespears.com
Attorney for Defendant
Enhanced Recovery Company, LLC

and

/s/ Scott S. Gallagher

Scott S. Gallagher
Florida Bar No. 371971 (admitted pro hac vice)
Smith, Gambrell & Russell, LLP
50 North Laura Street, Suite 2600
Jacksonville, FL 32202
Tel: (904) 598-6111
Fax: (904) 598-6211
Email: sgallagher@sgrlaw.com
Attorney for Defendant
Enhanced Recovery Company, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of July, 2015, a true and correct copy of the foregoing has been furnished via electronic mail and United States Mail to:

Lucy Horton
1732 Vantage Place
Charlotte, NC 28216
Email: thort416@yahoo.com

/s/ Scott S. Gallagher

Attorney